IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.15/2007

Shri Gajanan Sakaram Taleigaonkar,
major, businessman, resident of
Santa Cruz, Calapur,
Tiswadi, Goa. ..... Petitioner.

V/s

M/s. Raghurai Tamba,
a registered Partnership Firm,
having its Office at Parimal,
Altinho, Panaji, Goa. ..... Respondent.

Mr. S. D. Lotlikar, Senior Advocate with Mr. R. Menezes, Advocate for the petitioner.

Mr. S. D. Padiyar, Advocate for the respondent.

CORAM : S.A. BOBDE, J.

DATE : 7th March, 2007.

ORAL JUDGMENT :

Rule, returnable forthwith. Heard by consent.

2. The petitioner has challenged the order dated 29.6.2006, passed by the Civil Judge, Sr. Division, Ponda in Special Civil Suit No.57/94/A, by which the learned trial Judge has refused permission to the petitioner from examining Shri Ramesh Verenkar as a witness on the ground that the said Shri Ramesh Verenkar has been appointed as a conciliator and, therefore, cannot be examined by virtue of Sections 80 and 81 of the Arbitration and Conciliation Act, 1996. The said Sections read as follow :

" **80. Role of conciliator in other proceedings. -** Unless otherwise agreed by the parties, -

(a) the conciliator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings;

(b) the conciliator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

**81. Admissibility of evidence in other proceedings.-** The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings, -

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

(b) admissions made by the other party in the course of the conciliation proceedings;

(c) proposals made by the conciliator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator."

3. There is no doubt that a person has acted as a conciliator cannot be presented as a witness in any arbitral or judicial proceeding. The question is, however, whether the person who is to be examined was appointed as a conciliator and has acted as such.

4. Mr. Lotlikar, the Counsel for the petitioner refers to the Order, by which the role of the said Shri Ramesh Verenkar was defined. On 6.12.1997,

by the Order passed by the Civil Judge, Sr. Division, Ponda in Special Civil Suit No.57/94/A, the Court recorded the agreement of both the parties that an Engineer should be appointed to survey the suit shop and that he should report whether the construction is in accordance with the approved plan and that such an Engineer should also act as a valuer to value suit shop. The Court, therefore, appointed the said Shri Ramesh Verenkar as a Commissioner and directed him to inspect the shop on certain date. Thereafter, the said Shri Verenkar submitted a report styled as "Commissioner Report" in which he has given his observations about the suit shop and the property (Exhibit "D"-colly) . According to the learned Counsel for the petitioner, the record, therefore, shows that said Shri Verenkar was neither appointed as a conciliator, nor did he act as one.

5. Having perused the appointment of said Shri Verenkar by the Court, it is clear that he was appointed as a Commissioner. He also understood his function to be that of a Commissioner and, accordingly, he submitted the Commissioner Report. The said report does not contain any suggestion of conciliation or how the matter can be resolved between the parties. It is, therefore, clear that said Shri Verenkar cannot be considered to be a conciliator and, as such, his evidence cannot be excluded by virtue of Sections 80 and 81 of the Arbitration and Conciliation Act, 1996.

6. By the impugned order, the learned trial Judge has prevented the examination of said Shri Verenkar as a witness on the ground that he was

appointed as a Commissioner in the course of conciliation proceedings. The learned trial Judge has also described the said Shri Verenkar as a Commissioner. Even if the said Shri Verenkar was appointed as a Commissioner in the course of conciliation proceeding, what is important is the role he was expected to play. In this case, it is clear that the said Shri Verenkar was expected to act as a Commissioner which, in fact, he has done and submitted a Commissioner's Report. In this view of the matter, I find that the impugned order suffers from error of law, apparent on the face of the record.

7. The petitioner is, therefore, entitled to succeed. The impugned order is, therefore, set aside. Rule made absolute in the above terms.

S.A. BOBDE, J.

ssm.